

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LINDSAY RENNE KIRBY,

Defendant-Appellant.

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UNPUBLISHED

June 14, 2007

No. 270208

Oakland Circuit Court

LC No. 2006-206436-FH

Before: Fitzgerald, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of larceny from a person, MCL 750.357, and was sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of six to twenty years. She appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant’s sole issue on appeal concerns claims of evidentiary error. She argues that the trial court erred by sustaining the prosecutor’s hearsay objections to questions posed to a police detective regarding the accuracy of other witnesses’ prior descriptions of the thief. Pursuant to MRE 103(a)(2), a party may not predicate a claim of evidentiary error on the exclusion of evidence unless the party’s substantial rights were affected and “the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.” In this case, the substance of the evidence was not made known to the court by offer of proof. The context of the questions leading to the second and third rulings suggest that the general topic involved descriptions of the perpetrator provided by witnesses, but there is no indication what the substance of the testimony would have been. Without an offer of proof, our review is limited to plain error that affected defendant’s substantial rights. MRE 103(d).

Defendant claims that the evidence she sought to introduce was admissible as a statement of identification under MRE 801(d)(1)(C). We disagree. Under this rule, a statement is not hearsay if “[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . (C) one of identification of a person after perceiving the person . . . .” MRE 801(d)(1)(C). However, the evidence at issue in this case dealt with descriptive statements, not statements that identified a particular individual after the declarant perceives the individual. See *People v Sykes*, 229 Mich App 254, 270-273; 582 NW2d 197 (1998). Moreover, defendant has not established that the trial court’s ruling affected her

substantial rights. The key eyewitness was subject to thorough examination about her initial description of the culprit, so defendant can only speculate about the further exploration of the topic and what it could have added to the defense. Without a demonstration of an impingement of defendant's substantial rights, defendant's argument necessarily fails. MRE 103(d).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Peter D. O'Connell